CHARLES ELMORE CROPLEY
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Supreme Court of the United States

OCTOBER TERM, 1950.

No. 655

AUREA CALDERON, RUBY CALDERON, JAMES CALDERON,
Petitioners,

v.

MAURICE J. TOBIN, SECRETARY OF LABOR, and EMPLOYEES COMPENSATION APPEALS BOARD, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia, entered in the above entitled case on January 4, 1951.

OPINIONS BELOW.

The opinion of the District Court (R. 3A), is not officially reported, and the opinion of the Court of Appeals (R. 20) has not yet been officially reported.

JURISDICTION.

The judgment of the Court of Appeals was entered on January 4, 1951 (R. 22). The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED.

1. Whether the Full Faith and Credit Clause is binding on officials in the Executive Branch of the Federal Government as it is on the rest of the people of the United States.

2. Whether an *in rem* judgment of a Court of competent jurisdiction of the State of New York, specifically determining the status of the petitioners, is binding on officials in the Executive Branch of the Federal Government as on the rest of the world.

3. Respondent officials in the Executive Branch contended below that the Full Faith and Credit Clause was not binding on them so that they need not accord full faith and credit to the New York judgment determining petitioners' status. They also contended that Congress has, by statute (Section 42 of the Compensation Act), prevented this Court and the Judicial Branch of the Government from being able to enforce the Full Faith and Credit Clause against them.

We do not believe that the statute in question provides any such thing. See *Siegel* v. *United States* (D. C. N. Y. 1949), 87 F. Supp. 555. But, the Court below has so construed it and held, in effect, and there are therefore presented the questions whether the statute should be so construed, and if so, if it is constitutional. In turn, the problem of constitutionality presents these questions:

A. Does Congress possess the power to prevent this Court and the Judicial Branch of the Government from enforcing the Full Faith and Credit Clause of the Constitu-

tion against officials in the Executive Branch of the Federal Government?

B. Restated, does Congress possess the power to curtail and diminish the power conferred by Article III of the Constitution on this Court and the Judicial Branch of the Government, to enforce Constitutional provisions?

C. Further restated, does Congress possess the authority to block off the exercise of Judicial power conferred by the Constitution?

4. A New York Court of competent jurisdiction, in a special proceeding brought for the specific purpose of determining status, declared the petitioner Aurea and the other petitioners, her children, to be respectively, lawful surviving spouse and legitimate issue of a decedent. But respondents, officials in a compensation proceeding in the Executive Branch, asserting that the Full Faith and Credit Clause has no application to administrative agencies, proceeded to stigmatize the one as having merely lived in sin, and the children as bastards. This has cast a cloud on petitioners' status; diminished their standing in the community; and caused them irreparable injury. They sued below for a declaratory judgment determining their status with decedent.

The judgment below thus raises the question whether petitioners are entitled to a declaratory judgment determining their status or whether, as the court below held, their suit for a declaratory judgment must be dismissed for lack of jurisdiction, thereby leaving the whole question of status forever unsettled—leaving the petitioners as legitimate wife and children in the State of New York and over all the world, except in the Executive Branch of the Federal Government where they stand branded as illegitimate.

THE CONSTITUTIONAL PROVISION INVOLVED.

The full Faith and Credit Clause, Article IV, Section 1 of the Constitution provides as follows:

> "Section 1. Full faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the effect thereof."

STATUTORY PROVISIONS INVOLVED.

"28 U. S. Code, Sec. 1738 (formerly Sec. 687) provides as follows:

> "The Acts of the legislature of any State, Territory or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> "The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> "Such Acts, records, and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

Section 42 of the Compensation Act of September 5, 1915, as amended on July 29, 1945, provides in part as follows, (5 USCA 793):

> "The action of the Administrator or his designees in allowing or denying any payment under sections 751-791 and 793 of this title shall be final and conclusive for all purposes and with respect to all questions

of law and fact, and not subject to review by any other official of the United States, or by any court by mandamus or otherwise, and credit shall be allowed in the accounts of any certifying or disbursing officer for payments in accordance with such action."

STATEMENT OF THE CASE.

The complaint, (R. 11A-14A) alleges that on November 12, 1944, one Maximo Calderon died as a result of injuries sustained in the course of his employment by the United States Navy Yard in Brooklyn, New York (R. 11A). On November 29, 1944, Letters of Administration were issued by the Surrogate's Court of the State of New York, a Court of competent jurisdiction, to the plaintiff Aurea Calderon herein, as the lawfully wedded wife of the deceased Maximo Calderon.

But then another woman, Adela Cassas Calderon started a new and independent special proceeding under the laws of the State of New York (R. 14A). On December 22, 1944, she filed a Petition, initiating that special proceeding in the Surrogate's Court, praying for the said Letters of Administration and for the appointment of the petitioner as such Administratrix in the place and stead of Aurea, on the ground that she, the said petitioner, and not Aurea, was the lawfully wedded wife of the deceased at the time of his death (R. 14A). In due course, the issue raised by said special proceeding, that is, as to who was the lawfully wedded wife of the decedent, came on for trial before the Surrogate's Court on March 22, 1945. Testimony was taken and evidence received and the trial terminated on June 20, 1945 (R. 15A).

A third woman, Celia Rodriguez, was not a party to this lawsuit. She was ceremonially married to Martin Rodriguez and apparently did not consider that she had enough claim to be the decedent's spouse, to intervene. She did not assert a widow's interest in the estate, at any time.

In its judgment, the New York Court specifically found the following:

"1. That the respondent Aurea Calderon had validly intermarried non-ceremonially with the deceased in 1927;

"2. That the deceased had subsequently made formal recognition of the two children of this marriage as his lawful issue; and

"3. That the said deceased was still married to the respondent, and was therefore incapable of entering into a valid ceremonial marriage with the petitioner, as claimed, on May 13th, 1942."

The Court then decreed as follows:

"ORDERED, ADJUDGED, AND DECREED, that the aforesaid application for the revocation of the Letters of Administration, with limited authority, herein previously issued to the said respondent, Aurea Calderon, be, and hereby is, dismissed on the merits, and it is further

"ORDERED, ADJUDGED AND DECREED, that the order dated the 22nd day of December, 1944, restraining the said Administratrix, and suspending her powers to act as such, be, and hereby is, in all respects, vacated, and it is further

"ORDERED, ADJUDGED AND DECREED, that the right of the said respondent, Aurea Calderon, to Letters of Administration as the surviving spouse of the deceased, Maximo Calderon, be and hereby is, in all respects, confirmed."

The evidence received by the Surrogate's Court, among other things, related to the earlier relations of the deceased with the third woman named Celia Rodriguez. Thus, Adela argued before the Surrogate's Court and in her brief filed in the Appellate Division of the Supreme Court where the Surrogate's decree was affirmed, that Celia's relations with the decedent were such as to be close to common law marriage and so to preclude a common law marriage between the petitioner Aurea and the decedent. That contention was rejected, and, as above stated, the Court specifically

found that the petitioner Aurea, "had validly married nonceremonially with the deceased in 1927" (R. 15A), and that Aurea was his "surviving spouse" (R. 16A).

Thereafter, petitioner Aurea applied to respondents and their predecessors for compensation under the Compensation Act of 1916, as amended, as the surviving spouse and widow of the decedent, relying on the New York judgment. But, respondents and their predecessors refused to pay heed to the New York judgment. They asserted that they were not bound by it; and Respondent Appeals Board stated that the Board "determines that as a matter of law the appellant Aurea Calderon is not the widow of the deceased employee" (R. 12A-17A). Moreover, in oral argument before the Board, counsel for the then Bureau of Employees Compensation asserted categorically that the Full Faith and Credit Clause of the Constitution, while applicable to judicial proceedings, was not applicable to administrative proceedings. The Board itself adopted the view that it was not bound by the Full Faith and Credit Clause, asserting:

> "On the second question, namely, whether the Surrogate's decision is entitled to full faith and credit, it is sufficient to point out that the Constitutional provision in respect thereto, and the legislative enactments implementing the Constitutional provision, apply only to statutes and records of judicial proceedings in the States and Territories. **These requirements have no application to the official acts performed by a Federal administrative body.** * * * * The Federal administrative agencies must, as a matter of necessity, be permitted to determine the status of individuals under the statutes which they administer, and this imposes the necessity independently of determining the facts and applying the law to the facts." (Emphasis added).

There is the crux of the case. While the New York judgment specifically adjudicated that petitioner Aurea and the decedent "validly intermarried" (R. 15A), and that she

is his "surviving spouse" (R. 16A), respondents, asserting that they are not bound by the Full Faith and Credit Clause, have stated the very contrary, that as "a matter of law" Aurea is not the lawful surviving spouse and the widow of the deceased. And they brand the children as illegitimate.

The complaint further alleges that plaintiff Aurea is the lawful surviving spouse and widow of the deceased, and petitioners Ruby and James are the lawful issue of marriage between Aurea and the deceased (R. 12A-13A); that the respondents herein are not above the law but subject to it and that they are "legally bound to give Full Faith and Credit to the said decree and judgment of the Court of the State of New York" (R. 13A). The complaint finally alleges:

> "6. The said action of the defendants violates the Full Faith and Credit clause of the Constitution of the United States and is contrary to law; it deprives the plaintiffs herein of their constitutional rights in the said decree and judgment of the Court of the State of New York as a decree and judgment entitled to full faith and credit in every jurisdiction and office of the United States; it has cast and is still casting a cloud on their status and reputation; and it has diminished and is still diminishing their standing in the community, all to their irreparable injury and damage. The plaintiffs have no adequate remedy at law."

WHEREFORE, plaintiffs demand judgment:

> A. Declaring that the said judgment of the said Court of the State of New York is binding upon the defendants and each of them;
>
> B. Declaring that plaintiff Aurea Calderon herein is the lawful surviving spouse and widow of the said deceased, Maximo Calderon;
>
> C. Declaring that plaintiffs Ruby Calderon and James Calderon herein are the lawful issue of marriage between the said deceased Maximo Calderon and the plaintiff Aurea Calderon herein.

D. Restraining the defendants, and each of them, from refusing to pay or to direct the payment of compensation to the plaintiff Aurea Calderon herein on the ground that she is not the lawful surviving spouse and widow of the said deceased, Maximo Calderon.

E. For such other, further and different relief as to the Court may seem just and proper."

The District Court, on motion to dismiss and without a trial, dismissed the complaint for lack of jurisdiction (R. 3A, 4A). The District Judge in his oral opinion stated, in substance, that Congress could prevent and had prevented the judicial branch of the Government from enforcing the Full Faith and Credit Clause against Respondents (R. 3A, 4A). The Court of Appeals affirmed (R. 22).

With due respect to the Court below, its sketchy opinion herein (R. 20) demonstrates an utter lack of comprehension of the allegations of the complaint, and it fails even to disclose the issues presented. For instance:

1. The opinion below does not disclose the nature of this suit as one for a declaratory judgment, seeking to determine status.

2. The opinion below does not disclose that there is an outstanding New York judgment by a Court of competent jurisdiction, specifically adjudicating that petitioner Aurea and the decedent were validly married and that she is his lawful surviving spouse.

3. In Paragraph 2 of its opinion, the Court states that the decedent "had a succession of wives" and that "none of these relationships were formally dissolved". That statement is an unlegal contradiction in terms; for no person may have more than one legal wife. And the New York judgment specifically adjudicated that Aurea was *the* legal wife.

4. The opinion below states that "the Full Faith and Credit Clause of the Constitution is not involved". That

statement is flamboyant error; for it is flatly contrary to the allegations of the complaint above described, and to the strong arguments of Appellants' briefs.

5. The Court below, relying on Section 42 of the Compensation Act of 1916, as amended, 5 U. S. C. 793, did not even disclose that in the Court below that statute had been vigorously there attacked as unconstitutional.

6. The Court below failed to disclose that the statute described in 5 can have no possible application to petitioners Ruby and James, the children.

SPECIFICATION OF ERRORS TO BE URGED.

The Court of Appeals erred:

1. In holding that the New York judgment was not binding on respondents.

2. In failing to hold that the New York judgment is binding on respondents.

3. In affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT.

I. IMPORTANCE OF THE QUESTIONS.

A. **Whether the Full Faith and Credit Clause is binding on administrative agencies** is, we submit a far-reaching question of major importance and general application never before passed upon by this Court. Respondents do not deny that the New York judgment is binding in every court in the land, both state and Federal, and in those of the District of Columbia. But, below they asserted flatly that it is not binding on Government officials and administrative agencies. Indeed, in the Board's opinion above set forth (R. 9A), respondents categorically asserted that they are not bound by the Full Faith and Credit Clause and that as "a Federal Administrative Agency" they must "as a matter of necessity, be permitted to determine the status of indi-

viduals under the statutes which they administer" (R. 9A), regardless of previous judicial adjudication.

B. The Constitutionality of the Statute.

1. Petitioners may not be deprived of their constitutional rights in the New York judgment:

The rights of petitioners in the New York judgment are federal rights, constitutional in character, and no statute should be permitted to deprive them of it. But the judgment below has that effect. See *Embry* v. *Palmer*, 107 U. S. 3; *Davis* v. *Davis*, 305 U. S. 32; *California ex rel. McColgen* v. *Bruce*, 129 F. (2d) 421; and *Hancock Nat. Bank* v. *Farnum*, 176 U. S. 640.

2. Congress may not curtail judicial power:

Respondents asserted below (Appellees Brief, p. 18) that Section 42 of the Compensation Act has "equal validity with Article IV, Section 1 of the Constitution"; and the effect of the decision below is that that statute precludes enforcement by this Court of the Full Faith and Credit Clause against respondents. As such, the decision below has mountainous implications. Its holding that Congress may block off judicial enforcement of one provision of the Constitution, provides a clear analogy for holding that Congress, may, by legislation, block off judicial enforcement of any other provision of the Constitution. It needs no argument to demonstrate that the enforcement by an independent judiciary of our written law, including the Constitution, is the basic foundation upon which our Government is constructed. Yet, the necessary effect of the decision below is, with a single blow, to demolish it.

C. Whether the Declaratory Judgment Act Is to Be Emasculated.

The allegations of the complaint fall squarely within the authority covered by the Declaratory Judgment Act, 28 U. S. C. 2200, 2201. But, the decision below has the necessary effect of extinguishing its use for controversies with certain Government officials over status. The increasing usefulness of the Declaratory Judgment Act in determining status as illuminated by *McGrath* v. *Kristensen* (1950) 95 L. Ed. 165, make it essential that the decision below be not allowed to stand.

> "Where an official's authority to act depends upon the status of the person affected, . . . that status, when in dispute, may be determined by a declaratory judgment proceeding after the exhaustion of administrative remedies." *McGrath* v. *Kristensen* (1950) 95 L. Ed. 165, 170.

II. THE DECISION BELOW COMPLETELY DEPARTS FROM FUNDAMENTAL LAW AND REQUIRES THE SUPERVISORY POWER OF THIS COURT.

A. It Conflicts With the Full Faith and Credit Clause Cases.

The language of the Full Faith and Credit Clause above quoted, we submit, squarely requires the conclusion that the New York judgment is binding on respondents as well as on everybody else. In the courts below respondents failed to produce a single case, and we here challenge them to cite one, which exempts administrative agencies from the constitutional requirements of giving Full Faith and Credit to a judgment of a State Court of competent jurisdiction, determining status.

And, in holding that respondents are exempt from the Full Faith and Credit Clause, that the status of the petitioners is legitimate in the State of New York and the rest of the world generally, but that they may nevertheless be branded as illegitimate by certain Government officials, the

decision below is in rugged conflict with the whole Full Faith and Credit Clause as articulated by this Court. The purpose of the clause is to give "nationwide application" to "rights judicially established" in one State, *Magnolia Petroleum Company* v. *Hunt* (1943) 320 U. S. 430; and "unification", *Johnson* v. *Muelberger* (1951) 71 S. Ct. 474, 476. And the decision below is in painful conflict with the first *Williams* case, *Williams* v. *North Carolina* (1942), 317 U. S. 287. The holding in the first *Williams* case is aptly summed up in the second *Williams* case (1945), 325 U. S. 226, 232, as follows:

> "But insofar as a divorce decree partakes of some of the characteristics of a decree in rem, it is misleading to say that all the world is party to a proceeding in rem. See Brigham v. Fayerweather, 140 Mass. 411, 413, 5 N.E. 265, quoted in Tilt v. Kelsey, supra, 207 U. S. at page 52, 28 S. Ct. at page 4, 52 L. Ed. 95. All the world is not party to a divorce proceeding. What is true is that all the world need not be present before a court granting the decree and yet it must be respected by the other forty-seven States provided—and it is a big proviso—the conditions for the exercise of power by the divorce-decreeing court are validly established whenever that judgment is elsewhere called into question. In short, the decree of divorce is a conclusive adjudication of everything except for jurisdictional facts upon which it is founded. . . "

The New York judgment in the instant case is equally conclusive, for it fully adjudicates the status of the parties. It is thus entitled to Full Faith and Credit in every court and office in the land; and it is not subject to collateral attack outside New York any more than in the courts of that state, *Johnson* v. *Muelberger,* (1951) 71 S. Ct. 474, 477, 478.

B. It Conflicts With the Established Law of In Rem Judgments.

It is settled law that a judgment in a proceeding which has for its purpose the judicial determination of status, is one *in rem*, "binding on all persons in the world as to the existence of the status". *Restatement of the Law of Judgments*, Sections 74, 75.

33 Corpus Juris 1063.
34 Corpus Juris 1172, 1173.
1 Corpus Juris 1041, 1042.
1 C. J. S. 944, 1148.
Christianson v. *Kings County*, 239 U. S. 356.
O'Connor v. *Stanley*, 54 F. (2d) 20-CCA 8.
Galpin v. *Page*, 9 F. Cases No. 5, 206-3, Sawy. 93, 124.
Cunningham v. *Shanklin*, 60 Cal. 118, 125.
Reidy v. *Chicago C. & O. Ry. Co.*, S. Ct. Iowa, 249 N. W. 347.
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Roseman v. *Fidelity & Deposit Co. of Md.*, 154 Misc. 320.
Brotton v. *Donovan*, 224 N. W. 270, S. Ct. Minn.
Dulin v. *McCaw*, 39 W. Va. 721, 727; 20 S. E. 681.
Cross v. *Armstrong*, 10 N. E. 160, 44 Ohio St. 613.
Stropper v. *McCauley*, 45 Ga. 74.
Hobbs v. *Lenon*, 191 Ark. 509, 87 S. W. (2d) 6, 11.

In the court below, respondents took refuge in assertions that the New York judgment did not determine anybody's status. But, they did not cite a single case which in any way supports their assertions. Indeed, the New York judgment here involved, entered in a special proceeding brought to adjudicate status, which adjudicated that the decedent and another were "validly intermarried" and that one of them is the lawful "surviving spouse", is a judgment *in rem* as clearly and vividly as any judgment may have that character.

As stated in 3 *Freeman on Judgments,* Section 1534, Page 3146:

> "If a proceeding is designed primarily to determine status it is ordinarily, for that purpose and to that extent, a proceeding in rem and the adjudication is conclusive as a judgment in rem upon every person interested or affected by the status thus adjudicated."

And, as is stated in the case cited by Appellees below, *Hilton* v. *Snyder,* (1910), 37 Utah 384, 388:

> "If an action, although prosecuted by one individual against another, is instituted for the sole purpose of changing or declaring the status of either one or both of the parties to the action, then, in the absence of fraud or collusion in obtaining the judgment, it is binding upon all the world as well as the parties and their privies."

To the same effect, see *American Woolen Company* v. *Lesher* (1915), 267 Ill. 11, 107 N. E. 852, cited by Appellees below, which relies upon *Hilton* v. *Snyder.*

In *Amory* v. *Amory,* 26 Wis. 152, cited by appellees below, the decree in question was based on the finding of a referee "That the plaintiff and defendant were not married on or about the 12th day of March 1946 or at any other time." And as to this, the Court aptly said:

> "If this record is not a finality as to the status of the parties at the time the judgment was pronounced, then we are at a loss to know what record of a judicial proceeding would be."

Sorenson v. *Sorenson,* 68 Neb. 483, 98 N. W. 837, cited by appellees below, supports the foregoing and, we submit, gives respondents no comfort whatever.

C. In Holding That Congress May Curtail and Diminish Judicial Power.

The opinion of the District Court specifically stated (R. 3A, 4A), and the Court below in effect held, that Congress may block off judicial enforcement of the Full Faith and Credit Clause against certain Government officials. If followed, that decision must necessarily put an end to our constitutional system. For, if Congress may legislate one provision out of the Constitution, it may extinguish them all. We submit that this aspect of the decision below, standing alone, requires reversal by this court.

D. In Basing Its Opinion on the Theory of "Bounty."

The opinion below does not even disclose that the controversy in this case is over the status of petitioners. Instead, the opinion states that Congress could "preclude judicial review of the selection of the objects of its bounty". This holding is in error for the following reasons:

1. This suit does not seek to compel any kind of payment:

To assert that this suit is something other than a suit for a declaratory judgment and incidental relief, is to corrupt the English language and the allegations of the complaint, which ask specifically for a judgment declaring petitioners' status. The complaint also asks the incidental relief of an injunction restraining respondents from refusing to pay compensation to petitioner Aurea on an illegal ground, that is, that Aurea is not the surviving spouse of the deceased. This is specifically authorized by 28 U. S. C. 2202. See *National Hairdressers' and Cosmetologists' Assn.* v. *Philadelphia Co.*, (D.C. Del. 1941) 41 F. Supp. 731, Aff. 129 F. (2) 1020; *Interstate Natural Gas Company* v. *Louisiana Public Service Commission* (D.C. La. 1940), 34 F. Supp. 980. The complaint does not seek to restrain respondents from refusing to pay compensation

on any legal ground; and it certainly does not seek to "compel" any kind of payment.

2. Compensation is not a "bounty":

As the complaint alleges (R. 11A), the decedent was killed in the course of his employment by the Brooklyn Navy Yard of the United States Government, and he was killed as a result of the negligence of employees of the United States. Except for the doctrine of sovereign immunity, his Administratrix could have sued the United States for damages for wrongful death. Indeed, under the Federal Tort Claims Act, his Administratrix might now be able to sue the United States for damages for injuries negligently inflicted by employees of the Government, 28 U. S. C. 1346.

Coextensively, the whole theory of Workmen's Compensation laws is that of *compensation*. Thus State Compensation laws have been upheld by the Government where they provide a permissible "method of compensation". *New York Central Railway Co.* v. *White* (1917) 243 U. S. 188, 202. Such laws would be unconstitutional if they sought to grant "bounties".

3. Moreover, no questions of compensation are involved with respect to petitioners Ruby and James:

Full compensation has already been paid to petitioners Ruby and James, the children, and this suit involves no possible compensation or "bounty" as to them. Hence, Section 42 of the Compensation Act has no application whatever to the controversy over the status of Ruby and James. And the Full Faith and Credit Clause and the legal respect due the New York *in rem* judgment, clearly require that the complaint be upheld as to Ruby and James without even getting into the subjects of compensation or "bounties". Hence, the judgment below should be reversed as to Ruby and James, regardless of Aurea's situation.

4. Finally, even if we should assume that a "Bounty" is somehow involved, the judgment should be reversed:

If we should assume (which we in no sense concede) that granting the declaratory judgment sought will somehow involve the payment of a "bounty", still the complaint must be upheld. For, so long as *in rem* judgments are binding everywhere in the land and particularly under the Full Faith and Credit Clause, government officials dispensing "bounties" should be bound by them equally with other Government officials. The fact that they may be dispensing a "bounty" does not exempt them from the requirements of the Full Faith and Credit Clause, or authorize them to cloud the status of other people and so upset their lives. They are not authorized to collaterally attack a judgment otherwise entitled to Full Faith and Credit. See *Johnson* v. *Muelberger* (1951) 71 S. Ct. 474.

Moreover, when respondents clouded petitioners' status, they went far beyond the field of either compensation or bounty. They got into the field of status and created repercussions far beyond the boundaries of compensation or "bounties". They created a case and controversy over status, which the judicial branch of the Government is empowered to settle.

E. In Creating So Gross a Miscarriage of Justice.

After trial, petitioners had their status specifically adjudicated in clear and articulate terms by a Court of competent jurisdiction of the State of New York. Yet, when Aurea applied to respondents and their predecessors, they sent an investigator to see a third woman, Celia, some six months later, who requested Celia to file a claim for compensation. Respondents then declared that they were not bound by the Full Faith and Credit Clause, and proceeded to determine the matter of status all over again, concluding that Celia was the lawful surviving spouse, but that nobody was entitled to compensation because Celia was cere-

monially married to someone else. No compensation was paid to anyone as a result.

Petitioners' status was placed under a sinister cloud, their lives have been upset and they have suffered irreparable injury. With the dismissal of the complaint below, no constructive result has been accomplished, justice has completely miscarried, and petitioners can receive justice only at the hands of this Court.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

F. Trowbridge vom Baur,
Counsel for Petitioner.

March 28, 1951.

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 655

AUREA CALDERON, RUBY CALDERON, JAMES CALDERON, PETITIONERS

v.

MAURICE J. TOBIN, SECRETARY OF LABOR, AND EMPLOYEES COMPENSATION APPEALS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the District of Columbia (R. 3A) is not reported. The opinion of the United States Court of Appeals for the District of Columbia Circuit (R. 20) is reported at 187 F. 2d 514.

JURISDICTION

The judgment of the Court of Appeals was entered on January 4, 1951 (R. 22). The petition

for a writ of certiorari was filed on April 3, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the district courts have jurisdiction to review an administrative denial of a death benefit claim under the Federal Employees' Compensation Act despite the Act's express prohibition of review "by any court by mandamus or otherwise."

STATUTE INVOLVED

Section 42 of the Federal Employees' Compensation Act, as amended (59 Stat. 503, 504, 5 U.S.C. 793), provides in pertinent part:

> The action of the Commission or its designees in allowing or denying any payment under this Act shall be final and conclusive for all purposes and with respect to all questions of law and fact, and not subject to review by any other official of the United States, or by any court by mandamus or otherwise, and credit shall be allowed in the accounts of any certifying or disbursing officer for payments in accordance with such action.

STATEMENT

This case arises out of a claim by petitioner Aurea Calderon for Federal Employees' Compenstation Act benefits for the death of Maximo Calderon.

In 1925, Maximo and Celia Calderon entered into a common law marriage (R. 5A). They came to

New York in October, 1926, resided together there as man and wife, and the birth of their child was publicized in notices of announcement in which they held themselves out as married (R. 5A, 7A). Subsequently, Maximo began cohabiting with petitioner Aurea, by whom he had a child in August, 1928 (R. 5A). This cohabitation continued until some time between 1929 and 1931, another child being born in September, 1929. In May 1942, Maximo participated in a marriage ceremony with a third woman, Adele (R. 5A). Maximo lived with Adele until November 12, 1944, when he died as a result of injuries sustained in the course of his employment at the United States Navy Yard in Brooklyn, New York (R. 5A, 11A).

Celia, Adele and petitioner Aurea, all claiming to be Maximo's lawful widow, filed claims with the United States Employees' Compensation Commission for death benefits under the Federal Employees' Compensation Act (R. 5A). The Commission, on January 31, 1946, determined that Celia, rather than Aurea or Adele, was Maximo's lawful widow (R. 5A). Aurea then asked the Commission to reconsider its decision. She relied on the fact that a New York Surrogate's Court had issued to her letters of administration "as the lawfully wedded wife of the deceased, Maximo Calderon" and had denied Adele's petition for revocation of these letters (R. 6A, 14A-16A). Celia was not a party to the Surrogate's Court proceeding (Pet. 5; R.

6A). On June 20, 1946, the Commission reviewed and adhered to its earlier decision (R. 6A).

Effective July 16, 1946, the Bureau of Employees' Compensation was established in the Federal Security Agency to take over the functions of the Employees' Compensation Commission (60 Stat. 1095). Aurea applied to that Bureau for reconsideration of the former Commission's determination (R. 6A). On June 12, 1947, the Bureau found that Celia was not a party to the Surrogate's Court proceeding; that she had not been served with process nor appeared in that litigation; and that no issue was raised in that proceeding with respect to Celia's status as Maximo's lawful widow (R. 6A). The Bureau accordingly again ruled that Aurea was not Maximo's lawful widow and that the Surrogate's decree "is not binding upon the Bureau in respect to the Bureau's determination upon the status of Celia" (R. 6A). The Employees' Compensation Appeal Board affirmed this ruling on February 13, 1948 (R. 4A-10A; 17A).

About two months later, on April 15, 1948, petitioner Aurea, again claiming to be Maximo's lawful widow, filed a "Complaint for a Declaratory Judgment and an Injunction" against the Federal Security Administrator, the Federal Security Agency[1] and the Employees' Compensation

[1] Subsequent to the transfer of the Bureau of Employees' Compensation from the Federal Security Agency to the Department of Labor (15 F.R. 3178) and while the case was pending in the Court of Appeals, Secretary of Labor Tobin, on

Appeals Board (R. 11A). The complaint alleged that defendants' failure to recognize Aurea as Maximo's lawful widow did not give proper effect to the Surrogate's decree and that that failure violated the Full Faith and Credit Clause of the Constitution (R. 13A). An injunction was demanded to restrain the defendants from denying Federal Employees' Compensation Act benefits to petitioner Aurea upon the ground that she was not Maximo's lawful widow (R. 13A). In addition, the complaint demanded judgment declaring that the Surrogate's judgment was binding upon each of the defendants; that petitioner Aurea was Maximo's lawful widow and that her children, petitioners Ruby and James, were the lawful issue of the marriage between Maximo and Aurea (R. 13A). The district court dismissed the complaint on the ground that it had no jurisdiction of the subject matter and that the law expressly precluded such an action (R. 2A). The Court of Appeals affirmed, ruling that Section 42 of the Federal Employees' Compensation Act, *supra*, p. 2, precluded judicial review and that the "full faith and credit clause of the Constitution is not involved" (R. 21).

ARGUMENT

1. The court below properly rejected petitioners' contention that the district courts have jurisdiction to review the instant claim, which is essen-

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of the present respondents, was named as appellee in lieu of the Federal Security Agency and the Federal Security Administrator.

tially one for Federal Employees' Compensation Act death benefits.[2] Section 42 of the Federal Employees' Compensation Act, *supra,* p. 2, expressly denies the courts any power to take jurisdiction of such an action. It provides that the Commission's action in allowing or denying any payment under the Act shall be final and conclusive on all questions of law and fact, and that no other official or court of the United States shall have jurisdiction to review such decision by mandamus or otherwise.[3] Such a provision precluding judicial review is clearly constitutional since the allowance of employees' death benefits constitutes a gratuity which Congress may grant upon any conditions it sees fit. The Act, this Court has stated, "is essentially an act of justice or of grace on the part of the United States" and therefore "does not contemplate or provide for suits against the Government." *Dahn* v. *Davis,* 258 U.S. 421, 431. And, as the court below pointed out, Congress could, as it did here, "preclude judicial review of the selection of the objects of its bounty" (R. 21). That the United States may create rights in individuals against itself and provide only an ad-

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[2] While petitioners' complaint for declaratory judgment also seeks an adjudication of the status of Ruby and James Calderon, its essential purpose was to obtain judicial reversal of the Board's determination that petitioner Aurea was not Maximo's lawful widow and hence not entitled to death benefits under the Act.

[3] This express prohibition of judicial review makes inapplicable the judicial review provisions of the Administrative Procedure Act (Section 10, 60 Stat. 237, 243) and accounts for petitioners' inability to rely on those provisions here.

ministrative remedy is no longer open to question. *United States* v. *Babcock,* 250 U.S. 328, 331; *Tutun* v. *United States,* 270 U.S. 568, 576; *Lynch* v. *United States,* 292 U.S. 571, 581-582, 587; *Barnett* v. *Hines,* 105 F. 2d 96 (C.A.D.C.), certiorari denied, 308 U.S. 573; *Van Horne* v. *Hines,* 122 F. 2d 207 (C.A.D.C.), certiorari denied, 314 U.S. 689.

No different result is required because of the fact that the employee's death in 1944 antedated the July 28, 1945, amendment to Section 42 which added the non-judicial review provisions set forth above. Even before that amendment, other terms of the Act made it clear that Congress has vested the Commission with full power to pass upon and finally to determine all questions arising under the Federal Employees' Compensation Act, without affording claimants any recourse to judicial review. Section 36 of the Federal Employees' Compensation Act, 39 Stat. 749, 5 U.S.C. 786; *Dahn* v. *Davis, supra,* p. 431; *White* v. *T.V.A.,* 58 F. Supp. 776 (E.D. Tenn.); *Dierssen* v. *Woolever,* 3 F.R.D. 342 (D. Conn.); see 33 Op. Atty. Gen. 476.

2. Petitioners' attempt to avoid these express jurisdictional limitations by urging that their constitutional rights to the protection of the Full Faith and Credit Clause were violated when the Commission refused to substitute the Surrogate's finding for its independent determination that Celia, rather than Aurea, was Maximo's lawful widow. But in the administration of federal laws, it is obvious that the United States can not be bound by

determinations of state courts in proceedings to which the United States was not a party, especially where, as here, Congress has required the determination to be made by the federal administrative officials appointed for that purpose. See *Ramsey* v. *United States,* 61 F. 2d 444, 445 (C.A. 5). The instant case, therefore, as observed by the court below, does not present any question concerning the Full Faith and Credit Clause (R. 21).

Even if the Clause were involved, it is well-settled, with respect to judgments at least, that the Clause has no greater effect than to make a judgment of a state court *res judicata* in sister states to the same extent that it is *res judicata* in the first state. *Magnolia Petroleum Company* v. *Hunt,* 320 U.S. 430, 439. The Clause simply makes a matter which has been adjudicated in one state *res judicata* to the same extent in every other state. Here, it is apparent that the New York Surrogate's Court proceeding granting Aurea letters of administration could not have been *res judicata* in New York as to the Commission or Celia, who were never made parties to that proceeding. Under the pertinent New York statute, a Surrogate's decree is conclusive only as to those persons "of whom jurisdiction was obtained." Section 80, New York Surrogate's Court Act. Therefore, in New York, a decree granting letters of administration is not conclusive as to those who were not parties to the proceedings leading to the

granting of the decree. *Opton* v. *Guaranty Trust Company,* 194 Misc. 261. This court has invoked the same rule in order to deny any *res judicata* effect as to those who are not parties to proceedings granting letters of administration. *Blackburne* v. *Crawford,* 3 Wall. 190; *Kearney* v. *Denn,* 15 Wall. 51, 57.

Nor does petitioners' characterization of the Surrogate's Court proceedings as an *in rem* action confer upon it any broader *res judicata* effect. This very contention, as pointed out by the New York court in the *Opton* case, was rejected in *Scott* v. *McNeal,* 154 U.S. 34, 46, where this Court stated that even a judgment in proceedings "strictly *in rem* binds only those who could have made themselves parties to the proceedings, and who had notice, either actually, or by the thing condemned being first seized into the custody of the court." We submit, therefore, that since the Surrogate's decree would not be *res judicata* in New York as against the Commission or any one else not a party to the Surrogate's Court proceedings, it cannot be availed of as against the Commission under the Full Faith and Credit Clause.

CONCLUSION

The decision of the court below is clearly correct. There exists no conflict, and further review is not warranted. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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MAY, 1951

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